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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ABLE CORTEZ,

Defendant and Appellant.

D056451

(Super. Ct. No. SCN225324)

APPEAL from a judgment of the Superior Court of San Diego County, Daniel B. Goldstein, Judge. Affirmed.

Jorge Able Cortez entered negotiated guilty pleas to two counts of committing a lewd act upon a child under the age of 14 years (Pen. Code, § 288, subd. (a)). Under the plea agreement, the prosecution agreed to dismiss five other counts of committing a lewd act upon a child under the age of 14 years and one count of sending harmful matter with the intent to seduce a minor (Pen. Code, § 288.2, subd. (a)). The parties stipulated to a 10-year prison term.

After denying Cortez's motion to withdraw his guilty pleas, the trial court sentenced Cortez in accordance with the plea agreement.

Cortez obtained a certificate of probable cause.

FACTS

Cortez had repeated sex with his 11-year-old male cousin. After the boy's parents found out, Cortez went to Mexico. More than a year later, sheriff deputies arrested Cortez after seeing him in the Fallbrook area. On the change of plea form, Cortez indicated that he had engaged in oral copulation with the boy.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible, but not arguable, issues: (1) whether the trial court provided Cortez a proper hearing on his motion to withdraw his guilty pleas; and (2) whether the trial court abused its discretion by denying Cortez's motion to withdraw his plea.

We granted Cortez permission to file a brief on his own behalf. He has responded.

Cortez claims his guilty pleas were not constitutionally valid because they did not comport with the *Boykin/Tahl* (*Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl*

(1969) 1 Cal.3d 122) requirements.¹ Cortez is mistaken. The record before us shows the trial court advised Cortez of his constitutional rights: to a speedy public jury trial; to confront witnesses against him; to remain silent; and to present evidence on his own behalf. Cortez waived these constitutional rights. The court further advised Cortez of the penal consequences of his pleas, and Cortez stated he understood those consequences. On the change of plea form, Cortez had initialed that his attorney had explained to him numerous other consequences of the pleas, including lifetime registration as a sex offender. The change of plea form also indicated that a Spanish interpreter had translated the entire contents of the form for Cortez, who indicated his understanding by initialing and signing the form. Our reading of the record shows the guilty pleas were entered in accordance with *Boykin/Tahl* and supports the trial court's finding—at the time of the pleas—that Cortez knowingly, intelligently and voluntarily waived his rights and understood the consequences of his pleas.

Cortez also attacks his guilty pleas because, he claims, his counsel coerced or pressured him to accept the plea bargain. We are not persuaded by Cortez's after-the-fact,

¹ In *Boykin v. Alabama*, *supra*, 395 U.S. at pages 242 to 243, the United States Supreme Court held the record must affirmatively show that a defendant who pleaded guilty (1) did so voluntarily and intelligently and (2) waived the three principal constitutional rights given up by such a plea—the right to trial by jury, the privilege against compulsory self-incrimination and the right to confront his or her accusers. Later that year, the California Supreme Court decided *In re Tahl*, *supra*, 1 Cal.3d 122, which explicated for the guidance of California trial courts the procedure necessitated by *Boykin*. The California Supreme Court held that *Boykin* required the enumeration to an accused of the three constitutional rights surrendered by a guilty plea and a personal waiver by him of those rights. (*Id.* at pp. 130-132.)

self-serving claim. At the hearing on Cortez's motion to withdraw his guilty pleas, the coercion issue was litigated, and the attorney in question denied he forced or pressured Cortez to plead guilty. Moreover, we observe the judge who took the guilty pleas was the same judge who heard the motion to withdraw the pleas. At one point while questioning Cortez during the hearing on the motion to withdraw, the judge observed that when he took the plea, "I didn't see any threatening behavior by [defense counsel]. In fact, I asked you the question, are you entering into this plea freely and voluntarily, as I looked at you as I am looking at you now, and you responded that you were."

Trial counsel is required to advise his or her client of the consequences of either going to trial or pleading guilty. The fact that a defendant may have been persuaded, or was reluctant, to accept a plea bargain does not demonstrate that the plea was involuntary. (*People v. Ravaux* (2006) 142 Cal.App.4th 914, 919; *People v. Hunt* (1985) 174 Cal.App.3d 95, 103; *People v. Urfer* (1979) 94 Cal.App.3d 887, 892.) In other words, mere advice and persuasion by a defendant's own attorney does not suffice to vitiate the plea. (*People v. Evans* (1960) 185 Cal.App.2d 331, 334.) Cortez's claim of coercion from counsel could properly be viewed by the trial court as buyer's remorse. (See *People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208 [" '[A] plea may not be withdrawn simply because the defendant has changed his mind.' [¶] . . . [¶] [Appellant's] claim that [he was pressured] into the plea is not enough to constitute duress. Nothing in the record indicates he was under any more or less pressure than every other defendant faced with serious felony charges and the offer of a plea bargain."].)

Cortez claims he received ineffective assistance of counsel because (1) his attorneys² did not investigate the facts of the case and prepare for trial; and (2) his attorney at the time of the pleas coerced or pressured him to accept the plea bargain. To prevail on a claim of ineffective assistance of counsel, Cortez must establish his counsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.)

The record does not disclose what efforts Cortez's first three attorneys made to investigate the case. However, Cortez's fourth attorney testified he reviewed all discovery provided by the prosecution, including the taped interviews of the victims and Cortez's police interview. The attorney determined that Cortez was not properly advised of his *Miranda* (*Miranda v. Arizona* (1966) 384 U.S. 436) rights, and conveyed this to the prosecution. It is reasonable to assume that this was an important factor considered by the prosecution when it offered a more favorable offer to Cortez—from 12 years eight months to 10 years. The attorney also attempted to speak directly with the parents of the victim. Part of Cortez's displeasure with the attorney's efforts concerned the attorney's failure to follow up leads concerning property disputes between his family and the victim's family in Mexico, which the attorney properly found not relevant to the defense of these criminal charges. Cortez has not met his burden to show his fourth attorney's

² At the trial level, Cortez had five different attorneys.

investigation of his case fell below an objective standard of reasonableness under the circumstances of the case. With respect to Cortez's other complaint regarding ineffective assistance of counsel, we find, as discussed above, he has not met the burden to show his fourth attorney coerced him to plead guilty.

Cortez is correct that his police interrogation violated his *Miranda* rights but, under the circumstances of this case, the violation will not benefit him in this appeal. As discussed above, Cortez's attorney pointed out the *Miranda* violation to the prosecution. The prosecution conceded there was a *Miranda* violation. Even though Cortez's statements during the police interrogation would not be available in a trial, Cortez made incrementing statements in a controlled telephone call to a parent of the victim.

A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no other reasonably arguable appellate issues. Competent counsel has represented Cortez on this appeal.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.